

## **REMARKS**

### ***Summary of Changes Made***

The Application was filed with 27 claims. The 27 original claims were canceled and new claims 28 - 42 were added. New claims 43-52 are added herein. Therefore claims 28-52 (25 claims) remain pending in the application. No claims are amended or canceled herein. No new matter has been added herewith. Because as many as 27 claims have been pending in the application, no additional claim fees are believed due. Applicants thank Examiner Soroush for his time on the telephone on June 9, 2008 to clarify the issues regarding the application.

### ***Amendment Not Fully Responsive***

The Office Action of May 28, 2008 indicated that the Amendment filed February 14, 2008 was not fully responsive to the prior Office Action because the new claims (28-42) are directed to a process of using a composition, while the constructively elected invention related to the composition itself.

The Examiner contends that the action on the merits for “the originally presented invention” constitutes a constructive election of such invention (the composition claims). Hence, the currently pending claims directed to a process of using a composition are not directed to the constructively elected invention, and indeed, no pending claims are directed to such invention.

Applicants respectfully traverse Examiner’s determination of the constructive election of the composition claims (original claims 1-27).

In the Office Action of November 15, 2007, claims 21-27 were rejected as under 35 U.S.C. 101 as directed to non-statutory subject matter. Claims 21-27 were styled as “use” claims, commonly found in foreign origin patent applications. For example, claim 21 claimed “Use of extracts, parts, and/or other active components of Vitex agnus-castus against Infestation of arthropods.” Applicants do not dispute that claims containing the word “use” are inappropriate in United States patent practice. However, Applicants consider it apparent that “use” claims, such as claims 21-27, are substantively process claims, even if imperfectly worded. Given that claims 21-27 were nominally process claims and claims 1-20 were composition claims, it is conceivable that a restriction requirement could have been levied. However this was

not done. It is therefore difficult to understand how the Examiner can now state that the subject matter of the composition claims (1-20) was “constructively elected” and the subject matter of the remaining claims (21-27) was “withdrawn.” No restriction requirement was levied, no discussion of differing inventions was undertaken, and no invention was “elected.” Therefore, the subject matter of all originally filed claims (1-27), including composition claims and process claims, however worded, is still on the record, and nothing has been withdrawn.

Therefore, Applicants respectfully submit that the Amendment filed February 14, 2008 is, in fact, fully responsive to the prior Office Action, and proper in all procedural respects.

The present amendment maintains all process claims (28-42) and adds back the subject matter of the composition claims as new claims 43-52. The subject matter of claims 43-52 is supported in claims 1-20 as originally filed. Support for process claims 28-42 can be found in claims 21-27, as originally filed. No new matter is added hereby.

Applicants respectfully request entry of the present amendment, including both process and composition claims, and further request full examination on the merits of all pending claims or a restriction requirement clearly delineating the supposed different inventions embodied in the claims as they stand.

#### ***Claim Rejections - 35 U.S.C. §103(a) - (Ito/Gardiner)***

Because the composition claims have been added back to the application, the prior art rejection from the Office Action of November 15, 2007 must be addressed. In that action, claims 1-20 (composition claims) were rejected under 35 U.S.C. 103(a) as obvious in view of U.S. 6,437,002 to Ito et al., (“Ito”) in view of Gardiner, “Chasteberry,” Longwood Herbal Task Force, (“Gardiner”). The Examiner contended that Ito discloses a composition for treating skin diseases including acne comprising a compound of formula (I) as shown in the Abstract, further comprising a moisturizer, an oil (e.g., jojoba oil, an essential oil), an antiseptic, an antioxidant, an agent which absorbs or scatters UV light (e.g., TiO<sub>2</sub>), and a plant extract. The composition can be formulated for external application.

The Examiner started with a reference directed to an acne treatment made from plant extracts not including *Vitus agnus castus* (Ito) and combined with it a reference directed to a composition for treating acne including extracts of *Vitus agnus castus* (Gardiner). From this

combination, the Examiner concluded that the instantly claimed composition is obvious.

The Examiner will note that the subject matter of original claims 1-20 is largely captured in new claims 43-52. However, claim 43 reads "An arthropod repellent composition comprising extracts, and/or parts of the plant *Vitex agnus-castus*, and a component selected from the group consisting of N,N-diethyl-m-toluamide dimethyl phthalate, 2-ethyl-hexane-1,3-diol, isopulegol, 1-piperidine carboxylic acid, hydroxy-ethyl-isobutyl-piperidine-carboxylate, and combinations thereof."

Neither Ito nor Gardiner discloses or suggests an arthropod repellent composition having all of the limitations of new claim 43. It is believed that claim 43, and all claims that depend therefrom, are patentable over the combination of Ito and Gardiner.

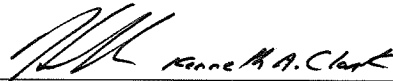
With respect to method claims 28-42, the cited references similarly fail to disclose or suggest a method of repelling arthropods.

## **CONCLUSION**

Based on the foregoing, the Applicants respectfully request entry of the instant amendment and a Notice of Allowability for claims 28-52. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application. If there are any additional fees resulting from this communication, please charge the same to our Deposit Account No. 18-0160, our Order No. GIL-16108.

Respectfully submitted,

RANKIN, HILL & CLARK LLP

A handwritten signature in black ink, appearing to read "Kenneth A. Clark", is written over a horizontal line.

Kenneth A. Clark  
Reg. No. 32,119  
Christopher J. Korff  
Reg. No. 55,342

925 Euclid Avenue  
Suite 700  
Cleveland, Ohio 44115-1405  
(216) 566-9700  
docketing@rankinhill.com